

Amendment No. 1 to HB3259

Fitzhugh
Signature of Sponsor

AMEND Senate Bill No. 2809*

House Bill No. 3259

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 67-5-1805, is amended by deleting the section in its entirety and by substituting instead the following:

§ 67-5-1805.

(a) Any person claiming or owning an undivided interest or part in any property or any specific portion of any property assessed to another shall receive a receipt in full for the person's taxes on paying such portion of the taxes as the person claims of the property or such proportion of the taxes as the person's quantity of the property bears to the whole quantity taxed.

(b) Before issuing a receipt in full on any specific portion of such property, the trustee or other collecting official shall be personally satisfied that the value placed on each portion is a correct relative valuation, either by agreement of the parties in interest or the certificate of the assessor that the trustee or other collecting official has properly fixed the valuation of the portion. This subsection shall apply to all taxes, interest, penalties, and costs that have or may become a lien on any property in the hands of the trustee or other collecting official or of the clerk of court for redemption from any tax sale.

(c) This section shall apply to a secured party only for the purpose of determining the amount of its payment or liability pursuant to § 67-5-2003(h), which shall be as follows:

(1) The personal property taxes to be withheld and paid by a secured party pursuant to § 67-5-2003(h) shall be determined by the valuation of only such personal property that the secured party has sold

pursuant to title 47, chapter 9, and the tax rate or tax rates applicable to the owner of such personal property.

(2) The assessor will determine valuation of such personal property based on its cost to the owner less applicable depreciation pursuant to § 67-5-903. In determining cost to the owner, the assessor shall consider relevant a statement tendered by the secured party that specifies the following: the manufacturer, model, and serial number of the personal property sold, the known or estimated purchase price and year of the owner's purchase of such property, and known or estimated taxes and installation charges. The assessor may also consider such additional information as may be available. A secured party may dispute whether valuation has been correctly determined pursuant to this section by direct appeal to the state board of equalization in the manner provided in § 67-1-1005.

(3) The secured party's payment or liability under § 67-5-2003(h) shall be limited to no more than four (4) tax years, none of which shall be a tax year in which the owner did not own such property on January 1.

(4) In regard to specific personal property and in regard to a specific tax year:

(A) A satisfaction and release of the secured party of any and all liability pursuant to § 67-5-2003(h), and a release of all personal property tax liens, regardless of jurisdiction or taxing authority, shall automatically go into effect upon any of the following:

(i) Payment of all outstanding county and municipal taxes, penalty, and interest pursuant to § 67-5-2003(h), as apportioned, in either the county of the owner's domicile or the county in which the personal property came into the

possession of the secured party, for which payment the secured party shall also receive a receipt in full;

(ii) The secured party's receipt of a writing stating or indicating that as of the calendar year of the sale referred to in § 67-5-2003(h), the owner appears on the tax rolls of either the county of the owner's domicile or the county in which the personal property came into the possession of the secured party and does not owe personal property taxes to such county or to a municipality located within such county; or

(iii) The secured party's receipt of a writing stating or indicating that as of the calendar year of the sale referred to in § 67-5-2003(h), the owner does not appear on the personal property tax rolls in both the county of the owner's domicile and also the county in which the personal property came into the possession of the secured party.

(B) In regard to any county or municipality, the "writing" described in this subdivision (c)(4) means one (1) or more recorded communications including, but not limited to, the following:

(i) A communication from a collecting official or assessor of such county or municipality delivered either in tangible form such as via hand delivery, U.S. mail, or courier, or delivered electronically such as via e-mail or facsimile;

(ii) The recorded results of a search of a publicly available database into which such county or municipality

enters or submits outstanding personal property tax

liability; or

(iii) In the event a secured party sends a written request for information to a collecting official or assessor via U.S. certified mail return receipt requested, and such collecting official or assessor does not send the requested information within fifteen (15) days of the secured party's request, the signed return receipt from such collecting official or assessor, which shall be deemed to contain the content required by § 67-5-1805(c)(4)(A)(ii) (in the case of an assessor) or § 67-5-1805(c)(4)(A)(iii) (in the case of a trustee or other collecting official).

(C) The comptroller of the treasury may prescribe a form for the use of a secured party in requesting a writing under this subdivision (c)(4).

(D) A secured party may not request a writing from an assessor within a county without first receiving a writing from the trustee of such county.

(E) No satisfaction or release as provided in this subdivision (c)(4) shall require payment to or a writing from a municipality located in a county in which the county trustee does not identify the owner as being on the personal property tax rolls of such county or in which the county assessor does not identify the owner as being on the personal property tax rolls of such municipality.

(5) For purposes of this subsection, "owner" shall mean the "individual, partnership, joint venture, corporation or other legal entity" referred to in § 67-5-2003(h).

(6) The application of this section to a secured party, and the mechanisms described in this section, shall be construed as remedial legislation designed to clarify and bring uniformity to existing law regarding the procedure of the apportionment and collection of taxes pursuant to § 67-5-2003(h).

SECTION 2. Tennessee Code Annotated, Section 67-5-2003, is amended by deleting subsection (h) in its entirety and by substituting instead the following:

(h) If any individual, partnership, joint venture, corporation or other legal entity has personal property, tangible or intangible, assessable by the county assessor or other authority, that is sold pursuant to title 47, chapter 9, the party possessing the security interest shall withhold and pay from the proceeds of the sale an amount sufficient to satisfy the personal property taxes assessed under § 67-5-2101 and subject to the provisions of § 67-5-1805. A secured party selling the property who fails to withhold and pay such amount shall be held to be personally liable for such amount to the trustee or other collecting official to which these personal property taxes are due, and any action to enforce the provisions of this subsection must commence against the secured party as a named defendant within four (4) years of the assessment date. Any amount paid by or collected from a secured party pursuant to this subsection shall reduce by that same amount the balance due by the taxpayer to the trustee or other collecting official who has been paid, and such amount shall also become a new obligation of payment by the delinquent taxpayer to the secured party, regardless of contractual limitations to the contrary. The application of § 67-5-1805 to a secured party, and the mechanisms described in this subsection, shall be construed as remedial legislation designed to clarify and bring uniformity to existing law regarding the procedure of the apportionment and collection of taxes pursuant to this subsection.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.